IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order no. ll9 of 2006
with
Civil Application No.l4l of 2006

Shobha Ganpat Phadke ... Appellant
vs
The Mah Housing and Area
Development Authority & ors ...respondents

Mr H S S Murthy with Krant K Narkar for appellant
Mr A.R.Patil AGP for MHADA- respondent nos.l and 2
Mr V.R.Dhond i/b Sandeep Kane for respondent no.3

CORAM; A.M.KHANWILKAR J.

DATED l7.2.2006

P.C.

l. Heard the learned counsel for the parties. Admit. Mr.A.R.Patil AGP waives service for respondent nos l and 2 and Mr Dhond i/b Sandeep Kane waives service for respondent no. 3. As a short question is involved the appeal is taken up for final hearing by consent.

2. This appeal takes exception to the order passed by the City Civil Court, Greater Mumbai dated l.2.2006 below Notice of Motion No.l94 of 2006 in L.C.Suit No. l2 of 2006.The appellant filed the suit before the trial court for the following

reliefs:

a) That this Hon'ble Court be pleased to declare that the action of the defendant nos l and 2 and its officers including that of Estate Manager (IV) of demolishing the structure and removal of business articles, things and fixtures as per the list annexed hereto as Exh C on 22.2.2005 from the suit plot and dipossessing the plaintiff from the plot, is illegal, high handed, contrary to law land consequently the defendants be directed to restore the said suit premises at their own costs and consequences to the plaintiff.

b) That this Hon'ble court be pleased to appoint the Court Receiver, High Court Bombay under Order XXXX, Rule l of C.P C. in respect of the suit plot and the plaintiff be appointed as an agent of the court receiver without security and royalty;

c) That pending the hearing and final disposal of the suit, this Hon'ble court be pleased to grant the mandatory order

directing the defendant nos.l and 2, its agents and servants for reconstructing or restoring the said premises consisting of Tarpaulin sheets with bamboos roof and wooden poles admeasuring 25’ x 20’ situated at Old Survey No.l2 of corresponding CTS no. l35 Behind Building no.l of Mitha Nagar, Goregaon, West Mumbai 400062 as shown in Exh A to the plaint.

d) That pending the hearing and final disposal of the suit, the defendant.no. 3 be restrained from preventing the plaintiff or her representative from visiting and remaining on the suit plot.

e) That pending the hearing and final disposal of the suit, this Hon‘ble court be pleased to restrain the defendants, its agents and servants and any other person or persons claiming through it from entering upon, creating any right of any third party in respect of the suit plot of land admeasuring 25’ x 20’ situated at Old Survey No. l2 of corresponding CTS No.l35, Behind Building no.l of Mitha Nagar Goregaon West

Mumbai 400062 as shown in Exh A to the plaint.

f) That pending the hearing and final disposal of the suit, this Hon'ble court be pleased to direct forthwith to return all the articles, things,fixtures as per the list annexed to the plaint, Exh C be returned to the plaintiff.

g) That pending the hearing and final disposal of the suit, this Hon'ble court be pleased to direct the defendant nos l to 3 to remove the tin sheets or patras or temporary erection made on the suit plot;

h) That interim and ad-interim reliefs in terms of prayer (c) and(g) above.

i) That cost of the suit be provided for;

j) That such other and further reliefs as this Hon'ble court may deem fit and proper".

3 During the pendency of the said suit, the appellant took out the notice of motion no l94 of

2006 for the following reliefs:

a) That pending the hearing and final disposal of the suit, this Hon'ble court be pleased to grant the mandatory order directing the defendant nos.l and 2, its agents and servants for reconstructing or restoring the said premises consisting of Tarpaulin sheets with bamboos roof and wooden poles admeasuring 25' x 20' situated at Old Survey No.l2 of corresponding CTS no. l35 Behind Building no.l of Mitha Nagar, Goregaon, West Mumbai 400062 as shown in Exh A to the plaint.

b) That pending the hearing and final disposal of the suit, the defendant.no. 3 be restrained from preventing the plaintiff or her representative from visiting and remaining on the suit plot.

c) That pending the hearing and final disposal of the suit, this Hon'ble court be pleased to restrain the defendants, its agents and servants and any other person or persons claiming through it from entering

upon, creating any right of any third party in respect of the suit plot of land admeasuring 25’ x 20’ situated at Old Survey No. l2 of corresponding CTS No.l35, Behind Building no.l of Mitha Nagar Goregaon West Mumbai 400062 as shown in Exh A to the plaint.

d) That pending the hearing and final disposal of the suit, this Hon‘ble court be pleased to direct forthwith to return all the articles, things,fixtures as per the list annexed to the plaint, Exh C be returned to the plaintiff.

e) That pending the hearing and final disposal of the suit, this Hon‘ble court be pleased to direct the defendant nos l to 3 to remove the tin sheets or patras or temporary erection made on the suit plot;

f) That pending the hearing and final disposal of the suit, Court Receiver under order 40 rule l of CPC may kindly be appointed in respect of the suit land as more particularly mentioned in the plaint

and shown in the Exhibit A to the plaint.

g) That interim and ad-interim reliefs in terms of prayer (a) and(c) above.

h) That cost of the Notice of Motion be provided for;

i) That such other and further reliefs as this Hon‘ble court may deem fit and proper".

4. The trial court by the impugned order has dismissed the notice of motion. The grievance of the appellant is that the nature of the order passed by the trial court is unsustainable. For, the motion was only at the stage of ad-interim relief. It would have been a different matter if the trial court was to merely reject the prayer for ad-interim relief, but at that stage of proceedings, the entire motion could not have been dismissed that too when no affidavits were filed by the respondents to the motion controverting the allegations made in the plaint and affidavit in support of notice of motion. The allegations are of serious nature that the officials of the MHADA have taken high handed action in respect of the

suit structure occupied by the appellant without due process of law..

5. There is substance in the grievance of the appellant that the concerned Judge of the lower court has disposed of the notice of motion at the ad-interim stage without even pleadings having been filed by the respective respondents in response to the notice of motion.Suffice it to observe that the trial judge perhaps is not familiar with the stage at which the notice of motion could be finally disposed of. It would be a different matter if the parties have had completed the pleadings and agreed to argue the matter for final disposal,but at the ad-interim stage, without pleadings having come on record,by no stretch of imagination the trial court could justly proceed to dispose of the motion finally against the plaintiff and especially in a case where serious allegations of high handed action resorted by the officials of MHADA is put in issue.

6. The next question however, is whether the appellant is not entitled to any ad-interim relief. The learned counsel for the respondent nos.l and 2 submitted that for the time being the respondents

will have no difficulty in returning the articles which have been seized from the suit site purportedly owned by the appellant. The list of such articles have been recorded in the file of the Executive Engineer, Bandra Division, Mumbai. For the present the articles so recovered by the respondent nos.l and 2 from the suit structure be returned to the appellant without prejudice to the rights and contentions of the respective parties. In so far as the remaining articles are concerned it would be open to the parties to establish their respective case before the trial court which will be decided on its own merit in accordance with law.

7. In so far as the grievance made by the appellant that the respondents will create third party rights and interest in the land where the suit structure was standing, the respondent nos. l and 2, on instructions stated that for the time being no such action is in contemplation of the respondents at least for some time. It is, however, stated that MHADA has already given offer to Mitha Nagar Matoshri Coop Housing Society to take over possession of the plot of land on l0.6.2003. However, no steps have been taken to deliver possession of any land to the said society

so far.The learned counsel for the appellant states that the site on which the suit structure was standing is not part of the plot offered to the said society. Be that as it may, the respondents are directed to maintain status quo with regard to the portion of the land on which the suit structure was standing for a period of ten weeks from today or till such period the notice of motion is finally disposed of by the trial court or modified by the trial court after the pleadings are placed on record before it and for the reasons recorded in that behalf. This direction is issued on the assurance given by the learned counsel appearing for the parties that the respondents will file their reply to the notice of motion within two weeks from today. Rejoinder,if any, to be filed within one week thereafter. The motion can proceed for final hearing before the concerned judge to be finally disposed of peremptorily within ten weeks from today.

8. This appeal is disposed of in the above terms, with no order as to costs. Needless to observe that all the issues arising in the notice of motion will have to be decided on its own merits by the trial court on the basis of the pleadings placed

before it by the respective parties, uninfluenced by any observations made in the impugned order or for that matter in the present order in accordance with law. The advocate for respondent nos.l and 2 on instructions states that the articles seized and belonging to the appellant referred to above, will be returned to the appellant within one week’s time.That assurance is accepted. Appeal as well as the Civil Application stand disposed of accordingly.